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Matters related to the implementation of the Convention: round-table discussions

Political participation and equal recognition before the law

Note by the Secretariat

The present note was prepared by the Secretariat in consultation with United Nations entities, representatives of civil society and other relevant stakeholders to facilitate the round-table discussion on the theme "Political participation and equal recognition before the law". The Secretariat hereby transmits the note, as approved by the Bureau of the Conference, to the Conference of States Parties to the Convention on the Rights of Persons with Disabilities at its eleventh session.

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Introduction

1. Political participation is an integral part of universal human rights. Effective participation in political and public spheres is crucial to democracy and good governance. The political participation of persons with disabilities allows for them to make positive contributions to disability-inclusive policies and to experience full citizenship. This is critical to the full implementation of both the Convention on the Rights of Persons with Disabilities and the 2030 Agenda for Sustainable Development.

2. The right to participate in political and public affairs has been established in a broad range of international norms. Both article 21 of the Universal Declaration of Human Rights and article 25 of the International Covenant on Civil and Political Rights recognize the right of every citizen to take part in the conduct of public affairs, their right to vote and to be elected and their right to have access to public services. Other major international instruments likewise recognize those rights.[1] Furthermore, target 10.2 of the 2030 Agenda for Sustainable Development seeks to empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability or other status, in order to reduce inequality within and among countries.

3. The right to political participation of persons with disabilities is recognized under article 29 of the Convention. In the present note, its link to the right to equal recognition before the law (recognized under article 12 of the Convention) is stressed. Key issues and challenges are identified regarding the rights to vote, to be elected and to hold office and the need for increased accessibility and the collection of data disaggregated by disability.

Participation in political and public life by persons with disabilities: issues and challenges

4. In recent decades substantial progress has been made in the recognition of the rights of persons with disabilities at the national and international levels. The Convention on the Rights of Persons with Disabilities of 2006 establishes a legal framework for the rights of persons with disabilities and addresses participation as a cross-cutting issue that permeates the Convention, including with respect to its purpose (article 1), its principles (article 3) and its guarantee of participation of persons with disabilities in political and public life (article 29). The negotiation of the Convention underscored the relevance of such participation, given the unprecedented level of involvement of civil society, notably organizations of persons with disabilities (see A/HRC/31/62, paras. 15–17). This exemplary practice has been embodied in article 4 (3) of the Convention, which requires States parties to "closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations" in implementing the Convention. The motto of the disability movement, "nothing about us without us", now constitutes an international human rights imperative.

5. Article 29 of the Convention requires States parties to "guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis

[1] See, e.g., the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (c)), the Convention on the Elimination of All Forms of Discrimination against Women (arts. 7 and 8) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 41).

with others". That provision encompasses a broad notion of political participation, underlining the right to vote and to be elected (article 29 (a)) and the requirement to promote "actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs" (article 29 (b)). Simply extending formal voting rights to persons with disabilities is not sufficient; States must ensure in practice the rights under article 29 by, for instance, ensuring full access to information and to polling stations; facilitating the use of assistive voting devices for persons with sensory impairments so that they can vote independently; and actively promoting the participation of persons with disabilities in political parties. Participation in political and public life has important links with, and indeed depends on, other provisions in the Convention, including on accessibility (article 9), equal recognition before the law (article 12), liberty and security (article 14), independent living and inclusion in the community (article 19), freedom of expression and opinion and access to information (article 21) and the right to inclusive education (article 24).

6. Major challenges to the full implementation of article 29 for persons with disabilities remain. The denial of the legal capacity of persons with disabilities, both in law and in practice, for example, through guardianship laws, is still prevalent worldwide. This directly contravenes article 12 of the Convention and results in the exclusion of some persons with disabilities from political participation. Many barriers to the political participation of persons with disabilities arise as a result of their not being able to access information related to political campaigns and political parties or not being able to participate in voting procedures. Furthermore, a lack of awareness about the rights of persons with disabilities, including by political parties, can lead to a low level of participation of persons with disabilities as voters and candidates for governmental or parliamentary bodies.

Right to vote

7. Article 29 (a) of the Convention requires States parties to ensure "the right and opportunity for persons with disabilities to vote and be elected". That right must be respected if the full citizenship of persons with disabilities and their effective participation and inclusion in society are to be ensured. By exercising that right, persons with disabilities assert their individual autonomy, including the freedom to make their own choices, and their right to be recognized as persons before the law. Under article 29, persons with disabilities must have not only the right, but also the opportunity, to vote and be elected. This places an obligation on States parties to guarantee, including through the adoption of positive measures, that all eligible persons have the genuine opportunity to exercise their voting rights.

8. While electoral systems and the requirements for voting eligibility differ among countries, the available evidence — scarce as it is — suggests that there is a clear gap in voter turnout between persons with disabilities and others. Importantly, the data generally include only those deemed "eligible" to vote, excluding those persons with disabilities who might not even be considered part of the electorate.

9 The denial of the legal capacity of persons with disabilities, in contravention of article 12 of the Convention, constitutes a pervasive de jure barrier to exercising the right to vote, in particular for persons with intellectual and psychosocial disabilities. National constitutions, legislation, civil codes, guardianship laws and mental health laws typically foresee the full or partial restriction of those persons' right to legal capacity, under such labels as "insane", "of unsound mind", "mentally ill" or "feeble-minded". This, in conjunction with a voting prohibition for those deemed not legally

capable, excludes many persons with disabilities from the right to vote. In many contexts, persons with disabilities who are forcibly living in institutions are not given the opportunity to exercise their right to vote, even if they have not been formally denied legal capacity.

10. The Committee on the Rights of Persons with Disabilities has addressed the link between denial of legal capacity and denial of the right to vote. In its general comment No. 1 (2014) on equal recognition before the law (CRPD/C/GC/1), the Committee affirms that all persons with disabilities have full legal capacity (ibid., para. 8), which includes "the capacity to be both a holder of rights and an actor under the law" (ibid., para. 12). The denial of the legal capacity of persons with disabilities is strongly rejected by the Committee (ibid., para. 15), which recommends that current substitute decision-making schemes, such as guardianship and interdiction, be eliminated and replaced by supported decision-making schemes. The Committee has highlighted the need to recognize legal capacity in public and political life, stressing that "a person's decision-making ability cannot be a justification for any exclusion of persons with disabilities from exercising their political rights, including the right to vote" (ibid., para. 48). Furthermore, the Committee has recommended that "all relevant legislation be reviewed to ensure that all persons with disabilities, regardless of their impairment, legal status or place of residence, have the right to vote and participate in public life on an equal basis with others" (CRPD/C/ESP/CO/1, para. 48)[2] and has called for the removal of "any restrictions on the exercise of political rights, in law or in practice" (CRPD/C/ETH/CO/1, para. 64).

11. The Committee notes that more than 11 years after the adoption of the Convention, jurisprudence of other human rights mechanisms at the global and regional levels continues to contravene article 29 of the Convention.[3] The Committee therefore calls upon States parties to the Convention and other relevant stakeholders to address this inconsistency within human rights law and to promote the legal standards of article 29 and ensure that they are upheld.

Right to be elected, hold office and perform all public functions at all levels of government

12. Article 29 of the Convention further requires States parties to protect the right of persons with disabilities "to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate". Recognition of this right is essential to ensuring that persons with disabilities are able to take an active part in national political life and in the functioning of the State, on an equal basis with others,

[2] See also CRPD/C/IRN/CO/1, para. 55 (a), in which it is recommended that provisions that "deny ... the right to exercise civil and political rights based on impairment or restriction of legal capacity" be repealed.

[3] The Human Right's Committee's general comment No. 25 (1996) on participation in public affairs and the right to vote includes highly outdated standards (e.g., in para. 4: "the established mental incapacity may be a ground for denying a person the right to vote or to hold office"). More recently, that Committee's recommendations have fallen short of the provisions in article 29 of the Convention on the Rights of Persons with Disabilities, by still accepting restrictions to the right to vote of persons with disabilities, stating that a State party should "ensure that it does not discriminate against persons with mental intellectual or psychosocial disabilities by denying them the right to vote on bases that are disproportionate or that have no reasonable and objective relationship to their ability to vote, taking account of article 25 of the Covenant, and article 29 of the Convention on the Rights of Persons with Disabilities (CCPR/C/BLZ/CO/1, para. 24).

including by assuming relevant positions of power as public authorities. This not only ensures the right to political participation in and of itself, but can also be instrumental in enhancing the perspective on disability in the work of public authorities and entities, raising awareness of persons with disabilities and empowering younger generations of persons with disabilities by providing role models.

13. Persons with disabilities "face multiple forms of discrimination that prevent them from exercising their rights to ... stand for election" (A/HRC/31/62, para. 20). Constitutional and legal provisions usually establish the criteria for eligibility to stand for election and to hold public office, which often negatively affect and discriminate against persons with disabilities, especially those with intellectual and psychosocial disabilities. Typically, persons with disabilities deprived of their legal capacity, in contravention of article 12 of the Convention, are not allowed to stand for election.

14. Owing to a lack of awareness and/or prejudice and stigma, political parties may not include or put forward candidates with disabilities. Persons with disabilities may face a lack of support measures in this area, such as personal assistance services and reasonable accommodation, and may therefore be either discouraged from running for office or unable to effectively carry out their public functions once elected. In particular, women and girls with disabilities have historically been silenced and are consequently disproportionately underrepresented in public decision-making (see CRPD/C/GC/3, para. 60).

15. In stating that a person's decision-making ability cannot justify any exclusion of persons with disabilities from exercising their political rights, including the right to stand for election, the Committee has recommended that persons with disabilities be provided "with reasonable accommodation and support, where desired, in the exercise of their legal capacity" (CRPD/C/GC/1, para. 49), so that they can hold office and perform their public functions effectively. Going beyond the issue of legal capacity, the Committee has also recommended that all persons with disabilities who are elected to a public position be provided with all required support, including personal assistants (see CRPD/C/ESP/CO/1, para. 48, and CRPD/C/SWE/CO/1, para. 52).

16. In the context of this right, specific measures under article 5 (4) of the Convention to achieve de facto equality, including affirmative action that favours persons with disabilities over others, such as the establishment of quotas in candidate lists for political parties or the reservation of seats in parliament or other areas of government for representatives of persons with disabilities, become highly relevant in counteracting the prevailing power dynamics and stigma within the political area of society, which relegate persons with disabilities, if they are represented at all, to lower positions of power and stereotyped roles based on outdated models of disability. States should put in place, in consultation with organizations of persons with disabilities, strong and sustained awareness-raising strategies to promote the empowerment, political engagement and leadership of persons with disabilities, with particular attention given to the more marginalized groups among persons with disabilities, such as deaf-blind persons, persons with intellectual and psychosocial disabilities and women with disabilities.

Making processes accessible in all dimensions of political participation

17. Lower levels of participation in political and public life may also derive from the inaccessibility of the political system, its procedures and information about it, which

de facto denies persons with disabilities the right and opportunity to gain access to relevant information, to vote and to participate effectively in political life. Information and voting systems are rarely in accessible formats, such as Braille or easy-to-read language, and alternative or augmentative modes of communication and assistance, such as sign language interpretation, are often not provided for those who require it. This lack of accessibility can also compromise the secrecy of the ballot if inadequate or inappropriate forms of assistance are provided to persons with disabilities.

18. Article 29 (a) (i) requires States parties to ensure that "voting procedures, facilities and materials are appropriate, accessible and easy to understand and use". In its general comment No. 2 (2014) on accessibility, the Committee stressed that if a State party failed to comply with that provision, persons with disabilities "would be unable to exercise those rights equally and effectively". It further stressed that "political meetings and materials used and produced by political parties or individual candidates participating in public elections" must be accessible (CRPD/C/GC/2, para. 43). In this regard, it is crucial that accessibility measures not overlook the most marginalized groups of persons with disabilities, such as those with intellectual and psychosocial disabilities, and should include "easy-read information on electoral campaigns and other accessible multimedia material" (CRPD/C/CAN/CO/1, para. 52).

19. Autonomous voting may not be possible for persons who require assistance in order to vote, for example, in cases where the only assistance permitted is from a public employee. To address this issue, in line with article 29 (a) (iii), the Committee has recommended that persons with disabilities be "allowed to have assistance from a person of their own choice" (CRPD/C/JOR/CO/1, para. 56 (a)).

20. Regarding the right to hold office and perform public functions, the Committee has stated that persons with disabilities "must have equal opportunities to carry out their mandate in a fully accessible manner" (CRPD/C/GC/2, para. 43).

21. In accordance with the Committee's guidance, States should strive to promote all aspects of accessibility to enable persons with disabilities to be active participants in political and public life. The systematic removal of barriers must be guided by the principle of universal design (article 2 of the Convention) and requires putting in place comprehensive policies, in close consultation with and with the active involvement of organizations of persons with disabilities. In addition, there is an immediate obligation on States parties to provide reasonable accommodation and support, when required, to allow for the exercise of rights under article 29; any failure to do so infringes the right to political participation of persons with disabilities and the principle of equality and non-discrimination (article 5).

Improving data collection and the evidence base to inform implementation and national monitoring

22. The lack of reliable data disaggregated by disability, including statistical and qualitative research data, has been recognized as a challenge in both developing and developed countries. This is worrying and needs to be addressed to enable the accurate assessment of the level of participation of persons with disabilities in political life, not least in voting. The Committee has explicitly addressed this issue in its recommendations relating to article 29 (see CRPD/C/CYP/CO/1, para. 58, and CRPD/C/LTU/CO/1, para. 58 (c)). Reliable data would undoubtedly help to identify further structural barriers to political participation, which might be context specific; to establish benchmarks from which to measure and monitor progress on the

enjoyment of the rights under article 29; and to inform more effective targeted policies, including more target actions, where necessary.

23. Article 31 of the Convention establishes a clear duty for States parties to "undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention". Since 2017, the Committee has systematically advocated the use of the Washington Group Short Set of Questions on Disability,[4] a resource on which there is broad international consensus and which has been used in around 80 countries (see E/CN.3/2018/17, para. 49).[5]

24. Independent monitoring mechanisms at the national level, as foreseen in article 33 (2), have a crucial role to play in promoting and protecting the rights of persons with disabilities under article 29, particularly if legislation enables them to receive and process complaints by individuals or groups of individuals and to make injunctive orders and/or recommendations to the public authorities involved. Disability-inclusive election observation and monitoring[6] can provide a crucial opportunity to identify barriers and to learn from good practices followed elsewhere. Other activities, including conferences, annual reports and awareness-raising activities, can contribute to the implementation of article 29. It is important to recall that article 33 (3) requires the participation of civil society, especially organizations of persons with disabilities, in monitoring the implementation of the Convention.

Justiciability of the right to participation in political and public life

25. States should make sure that national legislation provides for access to justice for persons with disabilities, in line with article 13 of the Convention, including by ensuring accessibility and providing age-appropriate accommodations for persons with disabilities. In its recent thematic study on the right to access to justice under article 13, the Office of the United Nations High Commissioner for Human Rights (OHCHR) provides key recommendations, including that persons with disabilities have access to courts and legal proceedings (see A/HRC/37/25, para. 63). Effective remedies must be available in cases of violations of the rights enshrined in article 29 of the Convention. Justiciability before courts and tribunals is therefore essential to ensuring the rights to political participation and equal recognition before the law.

26. OHCHR has stated that the "right to participate in political and public affairs should be enforceable by law and its denial should be open to judicial challenge. Appropriate remedies should be available if a violation is established" (A/HRC/30/26, para. 71). In that regard, "class or collective actions or similar judicial procedures are useful tools to raise awareness and address situations of structural

[4] See CRPD/C/LVA/CO/1, para. 53; CRPD/C/LUX/CO/1, para. 55 (b); CRPD/C/MNE/CO/1, para. 57; CRPD/C/MAR/CO/1, para. 59; CRPD/C/PAN/CO/1, para. 61; CRPD/C/GBR/CO/1, para. 65; CRPD/C/IRN/CO/1, para. 59; and CRPD/C/JOR/CO/1, para. 60.

[5] See also www.washingtongroup-disability.com/wp-content/uploads/2017/11/WG17_Session_10_1_Golden.pdf.

[6] Virginia Atkinson, Rebecca Aaberg and Staffan Darnolf, "Disability Rights and Election Observation: Increasing Access to the Political Process", *Nordic Journal of Human Rights*, vol. 35, No. 4 (December 2017), pp. 375–391. Available from www.tandfonline.com/doi/full/10.1080/18918131.2017.1400348/.

discrimination". In such cases, broad legal standing should be recognized (see A/HRC/34/26, para. 74).

Ways forward: making progress towards the full implementation of the Convention

27. Several challenges lie ahead in the process of fully implementing the rights of persons with disabilities under article 29 of the Convention. Restrictions of legal capacity, by law or by practice, and on voting, being elected or holding office must be abolished, and legislation should be harmonized with article 12 of the Convention. Schemes for supported decision-making should be developed. States should promote the participation in political life of persons with disabilities, including by adopting specific measures and affirmative action to achieve de facto equality, such as the establishment of quotas in elections, to counteract negative power dynamics and stigma. Awareness-raising strategies that target political parties and persons with disabilities, with particular attention on the most marginalized groups, are of the utmost importance, as are measures to ensure the accessibility of political systems and to provide assistance and support to persons with disabilities.

28. Many countries, even prior to the adoption of the Convention, have sought to address several issues, in particular those relating to legal capacity. Some have conducted or are conducting reviews of their legislation on legal capacity to ensure full compliance with the provisions of the Convention.

29. States parties have taken various measures to address other physical, information and communication barriers and to promote the full enjoyment of the right to political participation by persons with disabilities. Some have provided useful examples of different types of assistance that can be provided to persons with disabilities to enable them to exercise their right to vote. States parties make use of alternative ways of voting, such as postal voting or voting at specially adapted polling stations, in order to facilitate the political participation of persons with disabilities, and many provide information on alternative ways of voting, such as electronic voting, mobile polling stations, postal voting, voting by proxy and advance voting. Affirmative action has also been implemented in some countries to increase the representation of persons with disabilities in parliaments and other legislative bodies at all levels.

30. In connection with article 4 (3) of the Convention, some States have allocated financial resources to national organizations of persons with disabilities to promote their participation in the activities of relevant government bodies and advisory boards and have established national councils on disability or similar consultative bodies to provide advice to the Government on issues relating to disability.

Questions for consideration

31. The following questions are presented for consideration at the round-table discussion:

(a) What are the barriers in national legal systems that may negatively affect the exercise of the political rights of persons with disabilities? What good examples are there of initiatives to repeal restrictions on legal capacity and on the right to vote of persons with disabilities, notably those with intellectual and psychosocial disabilities?

(b) What can be done by Governments to promote supported decision-making for persons with disabilities to enable them to exercise their political rights?

(c) What measures do States parties need to take to increase the political participation of persons with disabilities, including to present themselves as candidates and to be elected to hold office? What initiatives have been taken to repeal restrictions on this right for persons with disabilities?

(d) Are there specific measures, including affirmative action, such as the establishment of quotas, that have provided good outcomes in terms of increasing the participation of persons with disabilities in political life, including in holding office and participating in public affairs?

(e) What examples of good practices are there regarding the removal of physical, information and communication barriers so as to enable persons with disabilities to exercise their political rights?